



This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers, please [click here](#) or use the "Reprints" tool that appears next to any article. Visit www.nytreprints.com for samples and additional information. [Order a reprint of this article now.](#) »

May 29, 1988

IDEAS & TRENDS

IDEAS & TRENDS; When It's One Absolute Right Against Another

By TAMAR LEWIN

WHEN Ginger and David R. Twitchell's 2-year-old son, Robyn, had a fever two years ago, they called in Christian Science spiritual healers, who visited the boy and prayed for his recovery. But five days later, after going into convulsions, vomiting and losing consciousness, Robyn died of a bowel obstruction. Mr. Twitchell held the child in his arms until he died, and then called a funeral home.

Last month, the Twitchells - who live in Boston and have been lifelong members of the Church of Christ, Scientist, whose national headquarters is there - were indicted for manslaughter. The Twitchells have pleaded not guilty, and the pretrial conference in their case will be held Wednesday. Similar charges are pending against four other Christian Science couples in California and Florida, and the California Supreme Court is expected to rule on whether such prosecutions are constitutional.

The cases are delicate, both emotionally and legally, since they pit the parents' constitutional rights to exercise their religion against the government's responsibility to protect children. "These are among the most difficult cases there are," said Alan Dershowitz, who teaches criminal and constitutional law at Harvard Law School. "If ever there were a right that seemed absolute, it would be the right of the parents to bring up their children in their own religion. And if ever there were a right that seemed absolute, it would be the right of the child to receive adequate medical care. So here you have two absolute rights in direct conflict."

Courts have gone both ways in cases involving parental religious rights - ruling, on one hand, that Amish parents have the right to remove their children from school, and, on the other, that children of Jehovah's Witnesses may be given blood transfusions against their parents' wishes. "Where it's a life or death matter, the basic legal principle seems to be that the child's right to survive until he is 18, and can choose his own religious principles, is paramount," said Professor Dershowitz. "The courts have said that children may not be sacrificed for their parents' faith."

But Nathan A. Talbot, a spokesman for the Christian Science church, argues that there is a difference between forcing treatment on a child, as in the Jehovah's Witnesses case, and punishing

grieving parents for the failure of a healing system they expected to succeed. Mr. Talbot stressed that some Christian Science parents do consult physicians for some injuries and illnesses, without reprisals from the church. A few Christian Scientists have split with the Boston "Mother Church" and enforce their own teachings.

"A lot of people try to frame this as parents' religious rights versus a child's right to live," said Mr. Talbot. "In that context, I'd vote for the child's rights - anybody would. But that's not the question. What we have here are parents who are choosing a well-documented alternative treatment that they believe is more effective than orthodox medical care. We have many cases of children declared incurable by physicians who are healed by Christian Science. Shouldn't a democratic society accommodate alternative methods of healing that have shown good results?"

While many doctors would question how well-documented Christian Science really is, most state legislatures have been sympathetic to those who believe in spiritual healing. At least 43 states - including Massachusetts, California and Florida - have laws specifically protecting Christian Science parents and others who use an organized form of spiritual healing from child-abuse charges when they fail to seek medical treatment. The Christian Science church has lobbied so successfully that, according to Mr. Talbot, the number of states with such laws grows every year.

The American Academy of Pediatrics recently urged pediatricians to work for the repeal of religious exemptions to child-abuse laws. "No statute should exist that permits or implies that denial of medical care necessary to prevent death or serious impairment to children can be supported on religious grounds," said a statement by the academy.

Even where laws are on the books, it is not clear how far their legal protection extends, or whether it overrides other laws. For example, in California, where three Christian Science couples have been indicted in the deaths of their children, the prosecutors brought charges under a law making it a crime to endanger a child's life.

The defendants in those cases are backed by the American Civil Liberties Union Foundation of Southern California, which argued to the state Supreme Court that because the state laws are unclear, the parents were essentially prosecuted for behavior that they could not have known was illegal. "Since California has a law saying that it is not child abuse to use spiritual healing, Christian Science parents here were on notice that their treatment is allowed by the state," said Carol Sobel, the A.C.L.U. lawyer involved in the case. "So even aside from the church-state issue, we think that it's an unconstitutional denial of due process to bring criminal charges against them."

Photo of David and Ginger Twitchell in court (AP)